SUPREME COURT, U. S.
FEB 25 1974

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1286

WADLEIGH-MAURICE, LTD. and WARNER BROS. INC.,

Petitioners

v.

THOMAS TAGGART,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF MOTION PICTURE ASSOCIATION OF AMERICA, INC. AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

SIDNEY A. SCHREIBER
JAMES BOURAS
Attorneys for Motion Picture Association of America, Inc. Amicus Curiae
522 Fifth Avenue
New York, N. Y. 10036

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Motion Picture Association of America, Inc. hereby respectfully moves for leave to file as *amicus curiae* the Brief appended hereto in support of the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit. The consent of the attorney for Petitioners has been obtained. On December 11, 1973, movant wrote to the attorney for Respondent, who refused consent by letter dated December 27, 1973.

Motion Picture Association of America, Inc. ("MPAA") is a trade association whose membership comprises companies which are among the largest producers and distributors of motion pictures in the United States, including the following:

Allied Artists Pictures Corporation
Avco Embassy Pictures Corp.
Columbia Pictures Industries, Inc.
Metro-Goldwyn-Mayer Inc.
Paramount Pictures Corporation
Twentieth Century-Fox Film Corp.
United Artists Corporation
Universal Pictures, a division of
Universal City Studios, Inc.
Warner Bros. Inc.

The issues raised in the Petition far transcend the immediate interests of the parties involved. Throughout their history, motion pictures have been the subject of countless suits for alleged invasions of privacy, and the constitutional standards by which such suits are to be adjudged are therefore of vital interest to the entire film industry. Moreover, documentaries like "Woodstock," the film involved in this case, have enjoyed considerable popularity in recent years, and the Court's disposition of the Petition will have a significant impact upon the future production of films in this genre. In addition, because the disputed portion of the film involved in this case is essentially a "man-in-the-street" interview, a time-honored journalistic device, the Court's disposition of the Petition will affect all media of expression, including motion pictures, which employ this device in dealing with newsworthy events.

Because MPAA believes that the general issues raised in this case are of vital concern to the entire motion picture industry, as well as to other media of expression, it respectfully requests permission to file the within Brief *amicus curiae* in support of the Petition for a Writ of Certiorari.

Respectfully submitted,

SIDNEY A. SCHREIBER
JAMES BOURAS
Attorneys for Motion Picture Association of America, Inc., Amicus Curiae

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BRIEF OF MOTION PICTURE ASSOCIATION OF AMERICA, INC. AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

Interest of the *Amicus*

The interest of the *amicus* is set for in the Motion for Leave to file this Brief, *supra.*

ARGUMENT

This case raises important issues about the meaning of this Court's decision in *Time, Inc.* v. *Hill* which deserve review.

In *Time, Inc.* v. *Hill,* 385 U.S. 374 (1967), this Court held that a *false* report about *unwilling* persons who *involuntarily* became involved in a newsworthy event was not actionable as an invasion of privacy consistently with the First Amendment "in the absence of proof that the

defendant published the report with knowledge of its falsity or in reckless disregard of the truth." *Id.* at 388.

In this case, the United States Court of Appeals for the Third Circuit held (2-1) that an *accurate* filmed interview *willingly* given by a person who became involved in a newsworthy event would be actionable as an invasion of privacy if the interviewee "was drawn out and made an involuntary performer." *Taggart* v. *Wadleigh-Maurice, Ltd.*, —F.2d—, 7 (3d Cir. 1973).[1]

MPAA believes that the Third Circuit's judgment is fundamentally at odds with this Court's decision in *Time, Inc.* v. *Hill, supra,* and that the Petition in this case is therefore clearly "certworthy."

"In order to lay hands on the precise issue which this case involves, it is useful first to canvass various matters which this record does *not* present." *Cohen* v. *California,* 403 U.S. 15, 18 (1971) (emphasis in original).

First, "Plaintiff does not claim . . . that the [Woodstock] Music Festival itself was not newsworthy. . . ." (Brief for Plaintiff-Appellant in the Third Circuit, page 6.)

Indeed, there can be doubt that the Woodstock festival was and is a matter of "public or general interest". *Rosenbloom* v. *Metromedia,* 403 U.S. 29, 43 (1971) (opinion of Brennan, J.). It was a major news event in and of itself,[2]

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[1] All page references employed herein in connection with the Third Circuit's decision of September 21, 1973, are to the printed slip opinions.

[2] "The festival was of wide public interest and was extensively reported in newspapers, magazines, radio, television and other news media throughout the country and the world. . . . There can be no question that the Woodstock Festival was and is a matter of valid public interest. . . . The bizarre happenings of the festival were not mere fleeting news but sensational events of deep and lasting public interest." *Man* v. *Warner Bros. Inc.,* 317 F.Supp. 50, 51, 53 (S.D.N.Y. 1970).

and is also perhaps the most well-known symbol of the "counterculture"[3] which is sometimes referred to as "the Woodstock generation." Public interest in this counterculture—its music, its mores, its effect upon American society, etc.—continues to this day.

Second, "Plaintiff does not claim that the segment of the film of which he complains was fictionalized. . . . The plaintiff does not deny that the film accurately depicts the scene. . . ." (Brief for Plaintiff-Appellant in the Third Circuit, pages 6, 7.)

Accordingly, "[a]gainst this background, the issue flushed by this case stands out in bold relief." *Cohen* v. *California, supra* at 22.

Plaintiff's only claim is that "the [interview] scene and particularly the dialogue was artificially created by the defendants and then edited into the final version of the film to the detriment of plaintiff." (Brief for Plaintiff-Appellant in the Third Circuit, page 7.)

> "It is plaintiff's contention that he was intentionally exploited by the interviewer and cameraman but that the exploitation was compounded by the editors in skillfully placing the scene in the final version of the film in such manner as to get the greatest humor at his expense and thus embarrass and ridicule him. Plaintiff contends that this type of conduct is malicious and actionable." (Brief for Plaintiff-Appellant in the Third Circuit, page 8.)

In short, Plaintiff (Respondent here) concedes that the Woodstock festival was a newsworthy event and that the film "Woodstock" accurately reproduced the interview with him, but contends that the conduct of Defendants (Petitioners here) was nevertheless actionable because (1)

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[3] See, generally, Roszak, "The Making of a Counter Culture: Reflections on the Technocratic Society and Its Youthful Opposition" (1969).

the interview was provoked by the interviewers and (2) its placement in "Woodstock" ridiculed and embarrassed him.

As to the first of Plaintiff's contentions, the truth of the matter is that all journalistic interviews are provoked by the interviewer. Specifically, "man-in-the-street" interviews of the type involved here have been a staple of American journalism for decades, and are today perhaps most frequently employed by television news shows. Are these interviews now arguably actionable on the ground that the interviewees were "drawn out"?

As Circuit Judge Van Dusen observed in dissent below:

> ". . . Mr. Taggart was simply filmed going about his ordinary occupation and asked a few questions that directly related to his participation in, and opinions on, a clearly newsworthy event. This is a common and important technique of investigative reporting and should enjoy the same constitutional protection as would a written or filmed account of that event." *Taggart* v. *Waldleigh-Maurice, Ltd., supra* at 12.

It is, of course, of no constitutional moment that the interview involved in this case appeared, not on a television news show, but in a feature-length motion picture which was entertaining as well as informative [4] and which was distributed commercially for profit.[5] Indeed, even on television news shows, "man-in-the-street" interviews are often entertaining as well as informative, and such shows are as profit-oriented as motion pictures.

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[4] See, e.g., *Joseph Burstyn, Inc.* v. *Wilson,* 343 U.S. 495, 501 (1952); *Winters* v. *New York,* 333 U.S. 507, 510 (1948).

[5] See, e.g., *Pittsburgh Press Co.* v. *Human Relations Commission,* 413 U.S. 376, 384-385 (1973); *Time, Inc.* v. *Hill, supra* at 397; *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 266 (1964); *Smith* v. *California,* 361 U.S. 147, 150 (1959); *Joseph Burstyn, Inc.* v. *Wilson, supra* at 501-502.

As to the second of plaintiff's contentions, the placement of the interview at a certain point in the film "Woodstock" was one of those "journalistic judgments," *Columbia Broadcasting* v. *Democratic Committee*, 412 U.S. 94, 130 (1973), which was properly within the province of Defendants. This is particularly so since:

> ". . . much linguistic [and visual] expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words [and images] are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated." *Cohen* v. *California*, *supra* at 26.

In other words, the First Amendment principles enunciated by this Court apply even if a work is impressionist as well as (or rather than) descriptive, or is "in the style of a news feature rather than a purely factual account." *Cantrell* v. *Forest City Publishing Co.*, 484 F.2d 150, 152 (6th Cir. 1973).

The fact that Plaintiff was "displeased" by the placement of the interview with him at a certain point in the film "Woodstock" is not enough to give rise to a cause of action. *Cantrell* v. *Forest City Publishing Co.*, *supra* at 157.

MPAA, in short, agrees with Circuit Judge Van Dusen, dissenting below, that "this case falls within the rule of *Time, Inc.* v. *Hill, supra.*" *Taggart* v. *Wadleigh-Maurice, Ltd.*, supra at 12.

Accordingly, remanding the case for trial on "disputed fact issues,"[6] as the Third Circuit directed, would be absolutely pointless when the test which will be employed in determining liability is clearly erroneous. Cf. *Mills* v. *Alabama*, 384 U.S. 214 (1966). The correct test is not whether Plaintiff "was drawn out and made an involuntary performer," *Taggart* v. *Wadleigh-Maurice, Ltd.*, *supra* at 7, but rather whether Defendants were guilty of "knowing or reckless falsity," *Time, Inc.* v. *Hill*, *supra* at 397, in filming the interview with Plaintiff and employing it in the film "Woodstock."

The issue raised by the Petition in this case is therefore whether the Third Circuit's judgment "must be reversed as being founded on an erroneous interpretation of a federal constitutional standard." *Memoirs* v. *Massachusetts*, 383 U.S. 413, 420 (1960) (opinion of Brennan, J.).

> "The question at this juncture is . . . merely whether this Court should grant certiorari. I fail to see how, on [an] . . . important issue like this, it can be concluded that this Court should withhold plenary review." *Wiseman* v. *Massachusetts*, 398 U.S. 960, 963 (1970) (dissenting opinion of Harlan, J.).

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[6]Indeed, there are no "disputed fact issues." The only question is the proper constitutional standard to be applied to the facts.

CONCLUSION

It is respectfully submitted that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit should be granted.

Respectfully submitted,

SIDNEY A. SCHREIBER
JAMES BOURAS
Attorneys for Motion Picture Association of America, Inc., Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that I have served three copies each of this Motion for Leave to File *Amicus Curiae* and Brief of Motion Picture Association of America, Inc. as *Amicus Curiae* upon counsel for Petitioners, Gary J. Greenberg, Esq., 61 Broadway, New York, New York 10006, and counsel for Respondent, Charles J. Farley, Jr., Esq., 112 South Main Street, Orange, New Jersey 07050, by depositing copies of said Motion and Brief in the United States Mail, properly addressed and with sufficient postage thereon to insure delivery first class.

This ..... day of February, 1974.

.....
James Bouras
An Attorney for *Amicus Curiae*

522 Fifth Avenue
New York, N. Y. 10036